

1990-1

YUKON ENERGY CORPORATION

DECISION 1990-1

DATED MARCH 19, 1990

YUKON UTILITIES BOARD

DECISION 1990-1

MONDAY, THE 19TH DAY OF MARCH, A.D. 1990.

IN THE MATTER OF the "Public Utilities Act",  
being Chapter 143 of the Revised Statues of  
Yukon, 1986, as amended;

AND IN THE MATTER OF an application by the  
Yukon Energy Corporation for a rehearing with  
respect to Paragraph 5.6 of Decision 1989-4  
concerning interest income on short term  
investments.

BEFORE:

THE YUKON UTILITIES BOARD

CONTENTS

	<u>Page</u>
APPEARANCES	1
WITNESSES	1
BACKGROUND	2
DECISION	9
ORDER	12

APPEARANCES

For Yukon Energy Corporation : M.D. Romanow

WITNESSES

For Yukon Energy Corporation : Harold Lewis  
Michael Sweatman

BACKGROUND

In its Decision 1989-5 dated October 20, 1989, the Yukon Utilities Board ("the Board") ordered The Yukon Electrical Company Limited ("YECL") and Yukon Energy Corporation ("YEC" "the Company") to prepare and file with the Board within thirty (30) days a schedule of just and reasonable rates and appropriate riders for the test years 1989 and 1990 in accordance with Decisions 1989-3, 1989-4 and 1989-5.

By letters dated November 14 and 27, 1989, YEC applied to the Board for a rehearing of Decision 1989-4 and YECL and YEC applied to the Board for an extension of the date for the filing of material as required by Orders 1989-3 and 1989-5.

On December 21, 1989, the Board issued Order 1989-6 wherein it ordered that:

- "1. The rates, tolls or charges set out in Schedule "A" attached to Interim Orders 1989-1 and 1989-2 be continued as interim rates of The Yukon Electrical Company Limited and Yukon Energy Corporation, respectively, for all billings issued on and after April 1, 1989 for consumption on and after March 1, 1989 until such time as the Board has made a final determination with respect to the application by Yukon Energy Corporation for a rehearing of Decision 1989-4.
2. The hearing of the application of Yukon Energy Corporation pursuant to Rule 27 of the Rules of Practice to re-hear the matter of interest income on short term investments as set out in paragraph 5.6 of Decision 1989-4, be held 23 February 1990 in Whitehorse at 9:00 a.m. at a place to be fixed by the Board.
3. The applicant, Yukon Energy Corporation deliver to all registered interveners and to the secretary of the Board by 29 December 1989, all materials they intend to rely upon at the said hearing.

4. The parties are at liberty to make written submissions to the Board in lieu of or in addition to oral submissions at the said hearing.
5. The Board's Order contained in Decision 1989-5 is hereby suspended until further order of the Board.
6. Nothing in this Order shall bind, affect or prejudice the Board in any way in its consideration of any other matter or question relating to The Yukon Electrical Company Limited or Yukon Energy Corporation."

The Board considers that Section 51 of the Public Utilities Act and Section 27 of the Board's Rules of Practice provide the Board with the necessary jurisdiction to hear YEC's application, provided that the Board determines that a rehearing is warranted.

The Board held a hearing in Whitehorse on February 23, 1990. Although notice of the hearing was duly published in the Yukon News and the Whitehorse Star on January 5, 1990, no intervenors attended the hearing.

During the course of the hearing, the Board dealt with YEC's application in two stages. First, the Board heard evidence and argument from YEC which took the position that a rehearing was warranted.



In this connection, YEC's witnesses explained that an error had been made in its general rate application filed in December 1988. Although YEC had forecast interest income of \$300,000 for each of the test years 1989 and 1990, it had erred by omitting to forecast interest expense on dividends payable to its parent company, Yukon Development Corporation ("YDC"), of \$300,000 in each of the test years 1989 and 1990.

YEC's witnesses explained that the Company's dividend policy was to declare dividends equal to its net income on a quarterly basis. This policy was to become effective with the balance of the Company's retained earnings at December 31, 1988, and would apply to its net income for the 1989 and 1990 test years.

YEC witnesses explained that, commencing in 1989, dividends will not be immediately paid out to its parent company, YDC, when declared but rather will be retained by YEC and invested in interest bearing securities. They explained that it was the Company's intention to pay cash dividends to YDC when the cash is required by YDC to invest in long-term debt and common shares of YEC, or to fund the Subsidy Fund.

The Company forecast that cash in the amount of \$5,500,000 would be required by YDC in 1989 for investment in long-term debt of YEC. It was also forecast that in 1990, YDC would require cash of \$5,000,000 for investment in long-term debt of YEC and \$4,000,000 to purchase additional common shares to be issued by YEC in 1990.

YEC witnesses further explained that, pursuant to a Resolution of its Board of Directors, the balance in the Company's Dividends Payable account was to bear interest at a rate equal to that earned by the Company on its investment in interest bearing securities.

Counsel for YEC provided the Board with a list of criteria accepted by the Alberta Public Utilities Board for conducting a review of a decision, and stated that the list represented the criteria generally used for this purpose by regulatory boards in Canada. The criteria are as follows:

- "1. Where new evidence, which was not known or not available at the time evidence was adduced and which may have been a determining factor in the decision, became known after the decision was made.

2. Where a decision is based on an error in law or in fact if such error is either obvious or is shown on a balance of probabilities to exist, and if correction of such error would materially affect the decision.
3. Where correction of a clerical error or clarification of an ambiguity is required.
4. Where other criteria, particular to a given case, are shown to be valid.
5. The Board should reject applications for review where the grounds advanced for such review raise an issue having no practical significance."

(Exhibit 2)

Counsel for YEC submitted that Criteria 2, 3, 4 and 5 were relevant to the current application, and only one of the criteria need be met in order to warrant a rehearing. In particular, counsel stated that with respect to Criterion 2 there was an error in fact in that the earnings on investments belong to YDC and YEC erred by including in its forecast interest income of \$300,000 for each of the years 1989 and 1990.

With respect to Criterion 3 counsel submitted that as the Board noted at page 19 of Decision 1989-4, YEC had not explained its dividend policy in a clear and unambiguous manner. Consequently, there was an ambiguity at the time of the hearing which needed to be resolved.

Counsel submitted that Criterion 4 enabled the Board to exercise its discretion if a particular situation before it did not fit within one of the other stated criteria.

Counsel further stated that under Criterion 5 the Board should reject applications for review that have no practical significance, however, the current application most certainly does have practical and significant aspects.

DECISION

After having given due consideration to the evidence adduced during the hearing and submissions of counsel for YEC, the Board concludes as follows:

With respect to Criterion 2, the error in fact alleged by YEC was that it did not make it clear to the Board at the time of the June 1989 hearing that dividends payable by YEC to YDC bear interest at the rate earned by YEC from time to time on short term investments.

Reference to YEC's liability for interest is contained in Exhibit 9 filed on February 23, 1990. Exhibit 9 is a "Resolution in writing of the Directors of the Corporation [Y.E.C.] effective as of October 16, 1989". This Resolution states:

"BE IT RESOLVED THAT

1. Subject to approval of the Yukon Development Corporation and the Minister responsible, dividends be declared as follows:

<u>Effective Date</u>	<u>Amount per Share</u>	<u>Total</u>
Jan 1, 1989	\$820.51	\$3,223,000
April 1, 1989	\$846.15	\$3,300,000
July 1, 1989	\$282.05	<u>\$1,100,000</u>
		<u>\$7,623,000</u>

And that these dividends be recorded in the books of the Corporation to the credit of Yukon Development Corporation and will bear interest at a rate equal to the short term investment rate of the Corporation as is obtained from time to time."

Mr. Sweatman, testifying on behalf of YEC, indicated "... that this resolution was discussed by the Board of Directors either at a meeting that they held on the 20th of October, 1989, or at a later meeting; ..." (Transcript, page 60).

YEC did not establish that a liability to YDC for interest on unpaid dividends existed at the time of the June 1989 hearing or was created prior to October 20, 1989. Mr. Sweatman's evidence indicates that the Resolution of the Board of Directors effective as of October 16, 1989 discussed above may not have been discussed by YEC's Board of Directors until a date subsequent to October 20, 1989.

The Board is not satisfied that an error in fact is obvious nor is it satisfied that YEC has demonstrated that an error in fact has been shown on the balance of probabilities to exist.

With respect to Criterion 3, the Board agrees with the Company that the matter at issue is not a clerical error.

The Board noted at page 19 of Decision 1989-4 that YEC witnesses had been unable to explain the Company's dividend policy in a clear and unambiguous fashion. The Board considers that the Company should have been aware of the ambiguity at the time of the June 1989 hearing, and that the onus was on the Company to have clarified the ambiguity at that time. No effort was made by the Company to clarify the ambiguity during the June 1989 hearing, or in the subsequent written Argument or Reply Argument. The Company has not attempted to clarify any ambiguity with respect to its dividend policy by way of a formal Resolution or other statement of the Board of Directors. The Board notes that the Company did not allege that there was an ambiguity in Decision 1989-4.

The Board does not reject the application on the basis that it is a moot point.

The Board does not consider that YEC has shown any other criteria particular to this case to be valid.

The Board denies YEC's application for a rehearing under Section 27 of the Board's Rules of Practice on the basis that YEC has not established that a rehearing is warranted.

ORDER

NOW THEREFORE IT IS ORDERED THAT:

The Yukon Electrical Company Limited and Yukon Energy Corporation shall prepare and file with the Board within ten (10) days a schedule of just and reasonable rates and appropriate riders for the test years 1989 and 1990 in accordance with Decisions 1989-3, 1989-4 and 1989-5 for implementation on April 1, 1990.

DATED AT WHITEHORSE, YUKON THIS 19TH DAY OF MARCH, 1990.

YUKON UTILITIES BOARD

A handwritten signature in dark ink, appearing to be 'H. J. M. R.', written in a cursive style.

CHAIRMAN